

**AMENDMENT IN THE NATURE OF A SUBSTITUTE**  
**TO H.R. 4157**  
**OFFERED BY MR. DEAL**

**(including an amendment to the title)**

Strike all after the enacting clause and insert the following:

**1 SEC. 1. SHORT TITLE AND TABLE OF CONTENTS.**

**2 (a) SHORT TITLE.**—This Act may be cited as the  
**3 “Better Health Information System Act of 2006”.**

**4 (b) TABLE OF CONTENTS.**—The table of contents of  
**5 this Act is as follows:**

Sec. 1. Short title and table of contents.

Sec. 2. Preserving privacy and security laws.

**TITLE I—COORDINATION FOR, PLANNING FOR, AND  
INTEROPERABILITY OF HEALTH INFORMATION TECHNOLOGY**

Sec. 101. Office of the National Coordinator for Health Information Technology.

Sec. 102. Report on the American Health Information Community.

Sec. 103. Interoperability planning process; Federal information collection activities.

Sec. 104. Ensuring health care providers may maintain health information in electronic form.

Sec. 105. Study and report on State, regional, and community health information exchanges.

**TITLE II—EXPEDITED MODIFICATION PROCEDURES FOR AND  
ADOPTION OF TRANSACTIONAL STANDARDS AND CODES**

Sec. 201. Procedures to ensure timely updating of standards that enable electronic exchanges.

Sec. 202. Upgrading ASC X12 and NCPDP standards.

**TITLE III—PROMOTING THE USE OF HEALTH INFORMATION  
TECHNOLOGY TO BETTER COORDINATE HEALTH CARE**

Sec. 301. Safe harbors to antikickback civil penalties and criminal penalties for provision of health information technology and training services.

Sec. 302. Exception to limitation on certain physician referrals (under Stark) for provision of health information technology and training services to health care professionals.

**1 SEC. 2. PRESERVING PRIVACY AND SECURITY LAWS.**

2 Nothing in this Act (or the amendments made by this  
3 Act) shall be construed to affect the scope, substance, or  
4 applicability of section 264(c) of the Health Insurance  
5 Portability and Accountability Act of 1996 and any regu-  
6 lation issued pursuant to such section.

7 **TITLE I—COORDINATION FOR,**  
8 **PLANNING FOR, AND INTER-**  
9 **OPERABILITY OF HEALTH IN-**  
10 **FORMATION TECHNOLOGY**

11 **SEC. 101. OFFICE OF THE NATIONAL COORDINATOR FOR**  
12 **HEALTH INFORMATION TECHNOLOGY.**

13 (a) IN GENERAL.—Title II of the Public Health Serv-  
14 ice Act is amended by adding at the end the following new  
15 part:

16 “PART D—HEALTH INFORMATION TECHNOLOGY

17 “OFFICE OF THE NATIONAL COORDINATOR FOR HEALTH  
18 INFORMATION TECHNOLOGY

19 “SEC. 271. (a) ESTABLISHMENT.—There is estab-  
20 lished within the Department of Health and Human Serv-  
21 ices an Office of the National Coordinator for Health In-  
22 formation Technology that shall be headed by the National

1 Coordinator for Health Information Technology (referred  
2 to in this part as the ‘National Coordinator’). The Na-  
3 tional Coordinator shall be appointed by and report di-  
4 rectly to the Secretary. The National Coordinator shall be  
5 paid at a rate equal to the rate of basic pay for level IV  
6 of the Executive Schedule.

7 “(b) GOALS OF NATIONWIDE INTEROPERABLE  
8 HEALTH INFORMATION TECHNOLOGY INFRASTRUC-  
9 TURE.—The National Coordinator shall perform the du-  
10 ties under subsection (c) in a manner consistent with the  
11 development of a nationwide interoperable health informa-  
12 tion technology infrastructure that—

13 “(1) improves health care quality, promotes  
14 data accuracy, reduces medical errors, increases the  
15 efficiency of care, and advances the delivery of ap-  
16 propriate, evidence-based health care services;

17 “(2) promotes wellness, disease prevention, and  
18 management of chronic illnesses by increasing the  
19 availability and transparency of information related  
20 to the health care needs of an individual for such in-  
21 dividual;

22 “(3) promotes the availability of appropriate  
23 and accurate information necessary to make medical  
24 decisions in a usable form at the time and in the lo-  
25 cation that the medical service involved is provided;

1           “(4) produces greater value for health care ex-  
2           penditures by reducing health care costs that result  
3           from inefficiency, medical errors, inappropriate care,  
4           and incomplete or inaccurate information;

5           “(5) promotes a more effective marketplace,  
6           greater competition, greater systems analysis, in-  
7           creased consumer choice, enhanced quality, and im-  
8           proved outcomes in health care services;

9           “(6) with respect to health information of con-  
10          sumers, advances the portability of such information  
11          and the ability of such consumers to share and use  
12          such information to assist in the management of  
13          their health care;

14          “(7) improves the coordination of information  
15          and the provision of such services through an effec-  
16          tive infrastructure for the secure and authorized ex-  
17          change and use of health care information;

18          “(8) is consistent with legally applicable re-  
19          quirements with respect to securing and protecting  
20          the confidentiality of individually identifiable health  
21          information of a patient;

22          “(9) promotes the creation and maintenance of  
23          transportable, secure, Internet-based personal health  
24          records, including promoting the efforts of health  
25          care payers and health plan administrators for a

1 health plan, such as Federal agencies, private health  
2 plans, and third party administrators, to provide for  
3 such records on behalf of members of such a plan;

4 “(10) promotes access to and review of the elec-  
5 tronic health record of a patient by such patient;

6 “(11) promotes health research and health care  
7 quality research and assessment; and

8 “(12) promotes the efficient and streamlined  
9 development, submission, and maintenance of elec-  
10 tronic health care clinical trial data.

11 “(c) DUTIES OF THE NATIONAL COORDINATOR.—

12 “(1) STRATEGIC PLANNER FOR INTEROPER-  
13 ABLE HEALTH INFORMATION TECHNOLOGY.—The  
14 National Coordinator shall provide for a strategic  
15 plan for the nationwide implementation of interoper-  
16 able health information technology in both the public  
17 and private health care sectors consistent with sub-  
18 section (b).

19 “(2) PRINCIPAL ADVISOR TO THE SEC-  
20 RETARY.—The National Coordinator shall serve as  
21 the principal advisor to the Secretary on the develop-  
22 ment, application, and use of health information  
23 technology, and shall coordinate the policies and pro-  
24 grams of the Department of Health and Human

1 Services for promoting the use of health information  
2 technology.

3 “(3) INTRAGOVERNMENTAL COORDINATOR.—

4 The National Coordinator shall ensure that health  
5 information technology policies and programs of the  
6 Department of Health and Human Services are co-  
7 ordinated with those of relevant executive branch  
8 agencies and departments with a goal to avoid dupli-  
9 cation of effort, to align the health information ar-  
10 chitecture of each agency or department toward a  
11 common approach, and to ensure that each agency  
12 or department conducts programs within the areas  
13 of its greatest expertise and its mission in order to  
14 create a national interoperable health information  
15 system capable of meeting national public health  
16 needs effectively and efficiently. The coordination  
17 authority provided to the National Coordinator  
18 under the previous sentence shall supercede any  
19 such authority otherwise provided to any other Fed-  
20 eral official.

21 “(4) ADVISOR TO OMB.—The National Coordi-  
22 nator shall provide to the Director of the Office of  
23 Management and Budget comments and advice with  
24 respect to specific Federal health information tech-  
25 nology programs.”.

1 (b) TREATMENT OF EXECUTIVE ORDER 13335.—Ex-  
2 ecutive Order 13335 shall not have any force or effect  
3 after the date of the enactment of this Act.

4 (c) TRANSITION FROM ONCHIT UNDER EXECUTIVE  
5 ORDER.—

6 (1) IN GENERAL.—All functions, personnel, as-  
7 sets, liabilities, administrative actions, and statutory  
8 reporting requirements applicable to the old Na-  
9 tional Coordinator or the Office of the old National  
10 Coordinator on the date before the date of the enact-  
11 ment of this Act shall be transferred, and applied in  
12 the same manner and under the same terms and  
13 conditions, to the new National Coordinator and the  
14 Office of the new National Coordinator as of the  
15 date of the enactment of this Act.

16 (2) RULE OF CONSTRUCTION.— Nothing in this  
17 section or the amendment made by this section shall  
18 be construed as requiring the duplication of Federal  
19 efforts with respect to the establishment of the Of-  
20 fice of the National Coordinator for Health Informa-  
21 tion Technology, regardless of whether such efforts  
22 are carried out before or after the date of the enact-  
23 ment of this Act.

24 (3) ACTING NATIONAL COORDINATOR.—Before  
25 the appointment of the new National Coordinator,

1 the old National Coordinator shall act as the Na-  
2 tional Coordinator for Health Information Tech-  
3 nology until the office is filled as provided in section  
4 271(a) of the Public Health Service Act, as added  
5 by subsection (a). The Secretary of Health and  
6 Human Services may appoint the old National Coor-  
7 dinator as the new National Coordinator.

8 (4) DEFINITIONS.—For purposes of this sub-  
9 section:

10 (A) NEW NATIONAL COORDINATOR.—The  
11 term “new National Coordinator” means the  
12 National Coordinator for Health Information  
13 Technology appointed under section 271(a) of  
14 the Public Health Service Act, as added by sub-  
15 section (a).

16 (B) OLD NATIONAL COORDINATOR.—The  
17 term “old National Coordinator” means the  
18 National Coordinator for Health Information  
19 Technology appointed under Executive Order  
20 13335.

21 **SEC. 102. REPORT ON THE AMERICAN HEALTH INFORMA-**  
22 **TION COMMUNITY.**

23 Not later than one year after the date of the enact-  
24 ment of this Act, the Secretary of Health and Human  
25 Services shall submit to Congress a report on the work



1 conducted by the American Health Information Commu-  
2 nity (in this section referred to as “AHIC”), as established  
3 by the Secretary. Such report shall include the following:

4 (1) A description of the accomplishments of  
5 AHIC, with respect to the promotion of the develop-  
6 ment of national guidelines, the development of a  
7 nationwide health information network, and the in-  
8 creased adoption of health information technology.

9 (2) Information on how model privacy and secu-  
10 rity policies may be used to protect confidentiality of  
11 health information, and an assessment of how exist-  
12 ing policies compare to such model policies.

13 (3) Information on the progress in—

14 (A) establishing uniform industry-wide  
15 health information technology standards;

16 (B) achieving an internet-based nationwide  
17 health information network; and

18 (C) achieving interoperable electronic  
19 health record adoption across health care pro-  
20 viders.

21 (4) Recommendations for the transition of  
22 AHIC to a longer-term advisory and facilitation enti-  
23 ty, including—

24 (A) a schedule for such transition;

1 (B) options for structuring the entity as ei-  
2 ther a public-private or private sector entity;

3 (C) the role of the Federal Government in  
4 the entity;

5 (D) steps for—

6 (i) continued leadership in the facilita-  
7 tion of guidelines or standards;

8 (ii) the alignment of financial incen-  
9 tives; and

10 (iii) the long-term plan for health care  
11 transformation through information tech-  
12 nology; and

13 (E) the elimination or revision of the func-  
14 tions of AHIC during the development of the  
15 nationwide health information network.

16 **SEC. 103. INTEROPERABILITY PLANNING PROCESS; FED-**  
17 **ERAL INFORMATION COLLECTION ACTIVI-**  
18 **TIES.**

19 Part D of title II of the Public Health Service Act,  
20 as added by section 101, is amended by adding at the end  
21 the following new section:

22 “INTEROPERABILITY PLANNING PROCESS; FEDERAL  
23 INFORMATION COLLECTION ACTIVITIES

24 “SEC. 272. (a) STRATEGIC INTEROPERABILITY  
25 PLANNING PROCESS.—

1           “(1) ASSESSMENT AND ENDORSEMENT OF  
2       CORE STRATEGIC GUIDELINES.—

3           “(A) IN GENERAL.—Not later than De-  
4       cember 31, 2006, the National Coordinator  
5       shall publish a strategic plan, including a sched-  
6       ule, for the assessment and the endorsement of  
7       core interoperability guidelines for significant  
8       use cases consistent with this subsection. The  
9       National Coordinator may update such plan  
10      from time to time.

11          “(B) CONSULTATION WITH OTHER PAR-  
12      TIES.—The National Coordinator shall develop  
13      and implement such strategic plan in consulta-  
14      tion with the American Health Information  
15      Community and other appropriate entities.

16          “(C) DEFINITIONS.—For purposes of this  
17      section:

18              “(i) INTEROPERABILITY GUIDE-  
19          LINE.—The term ‘interoperability guide-  
20          line’ means a guideline to improve and pro-  
21          mote the interoperability of health infor-  
22          mation technology for purposes of elec-  
23          tronically accessing and exchanging health  
24          information. Such term includes named  
25          standards, architectures, software schemes

1 for identification, authentication, and secu-  
2 rity, and other information needed to en-  
3 sure the reproducible development of com-  
4 mon solutions across disparate entities.

5 “(ii) CORE INTEROPERABILITY GUIDE-  
6 LINE.—The term ‘core interoperability  
7 guideline’ means an interoperability guide-  
8 line that the National Coordinator deter-  
9 mines is essential and necessary for pur-  
10 poses described in clause (i).

11 “(iii) SIGNIFICANT USE CASE.—The  
12 term ‘significant use case’ means a cat-  
13 egory (as specified by the National Coordi-  
14 nator) that identifies a significant use or  
15 purpose for the interoperability of health  
16 information technology, such as for the ex-  
17 change of laboratory information, drug  
18 prescribing, clinical research, and elec-  
19 tronic health records.

20 “(2) NATIONAL SURVEY.—

21 “(A) IN GENERAL.—Not later than August  
22 31, 2008, the National Coordinator shall con-  
23 duct one or more surveys designed to measure  
24 the capability of entities (including Federal  
25 agencies, State and local government agencies,

1           and private sector entities) to exchange elec-  
2           tronic health information by appropriate signifi-  
3           cant use case. Such surveys shall identify the  
4           extent to which the type of health information,  
5           the use for such information, or any other ap-  
6           propriate characterization of such information  
7           may relate to the capability of such entities to  
8           exchange health information in a manner that  
9           is consistent with methods to improve the inter-  
10          operability of health information and with core  
11          interoperability guidelines.

12                 “(B) DISSEMINATION OF SURVEY RE-  
13                 SULTS.—The National Coordinator shall dis-  
14                 seminate the results of such surveys in a man-  
15                 ner so as to—

16                         “(i) inform the public on the capabili-  
17                         ties of entities to exchange electronic  
18                         health information;

19                         “(ii) assist in establishing a more  
20                         interoperable information architecture; and

21                         “(iii) identify the status of health in-  
22                         formation systems used in Federal agen-  
23                         cies and the status of such systems with  
24                         respect to interoperability guidelines.

1           “(3) ENDORSEMENT OF CORE INTEROPER-  
2           ABILITY GUIDELINES FOR SIGNIFICANT USE  
3           CASES.—As part of the strategic plan under para-  
4           graph (1) and not later than August 31, 2009, the  
5           National Coordinator shall endorse core interoper-  
6           ability guidelines for significant use cases. Compli-  
7           ance with such guidelines shall be voluntary, subject  
8           to subsection (b)(1).

9           “(b) FEDERAL HEALTH INFORMATION COLLECTION  
10          ACTIVITIES.—

11           “(1) REQUIREMENTS.—With respect to a core  
12          interoperability guideline endorsed under subsection  
13          (a)(3) for a significant use case, the President shall  
14          take measures to ensure that Federal activities in-  
15          volving the broad collection and submission of health  
16          information are consistent with such guideline within  
17          three years after the date of such endorsement.

18           “(2) PROMOTING USE OF NON-IDENTIFIABLE  
19          HEALTH INFORMATION TO IMPROVE HEALTH RE-  
20          SEARCH AND HEALTH CARE QUALITY.—Where fea-  
21          sible, and consistent with applicable privacy or secu-  
22          rity or other laws, the President, in consultation  
23          with the Secretary, shall take measures to allow ac-  
24          cess to useful categories of non-identifiable health  
25          information in records maintained by the Federal

1 government, or maintained by entities under con-  
2 tract with the Federal government, to advance  
3 health care quality and health research where such  
4 information is in a form that can be used in such  
5 research. The President shall consult with appro-  
6 priate Federal agencies, and solicit public comment,  
7 on appropriate categories of information, and appro-  
8 priate measures to take. The President may consider  
9 costs, administrative burden, and the potential for  
10 improvements in health care quality in determining  
11 such appropriate measures.

12 “(3) ANNUAL REVIEW AND REPORT.—For each  
13 year during the five-year period following the date of  
14 the enactment of this section, the National Coordi-  
15 nator shall review the operation of health informa-  
16 tion collection by and submission to the Federal gov-  
17 ernment and the purchases (and planned purchases)  
18 of health information technology by the Federal gov-  
19 ernment. For each such year and based on the re-  
20 view for such year, the National Coordinator shall  
21 submit to the President and Congress recommenda-  
22 tions on methods to—

23 “(A) streamline (and eliminate redundancy  
24 in) Federal systems used for the collection and  
25 submission of health information;

1 “(B) improve efficiency in such collection  
2 and submission;

3 “(C) increase the ability to assess health  
4 care quality; and

5 “(D) reduce health care costs.”.

6 **SEC. 104. ENSURING HEALTH CARE PROVIDERS MAY MAIN-**  
7 **TAIN HEALTH INFORMATION IN ELECTRONIC**  
8 **FORM.**

9 Part D of title II of the Public Health Service Act,  
10 as added by section 101(a) and amended by section 103,  
11 is amended by adding at the end the following new section:

12 “ENSURING HEALTH CARE PROVIDERS MAY MAINTAIN  
13 HEALTH INFORMATION IN ELECTRONIC FORM

14 “SEC. 273. (a) IN GENERAL.—Any health care pro-  
15 vider that participates in a health care program that re-  
16 ceives Federal funds shall be deemed as meeting any re-  
17 quirement for the maintenance of data in paper form  
18 under such program (whether or not for purposes of man-  
19 agement, billing, reporting, reimbursement, or otherwise)  
20 if the required data is maintained in an electronic form.

21 “(b) RELATION TO STATE LAWS.—Beginning on the  
22 date that is one year after the date of the enactment of  
23 this section, subsection (a) shall supersede any contrary  
24 provision of State law.

25 “(c) CONSTRUCTION.—Nothing in this section shall  
26 be construed as—



1 “(1) requiring health care providers to maintain  
2 or submit data in electronic form;

3 “(2) preventing a State from permitting health  
4 care providers to maintain or submit data in paper  
5 form; or

6 “(3) preventing a State from requiring health  
7 care providers to maintain or submit data in elec-  
8 tronic form.”.

9 **SEC. 105. STUDY AND REPORT ON STATE, REGIONAL, AND**  
10 **COMMUNITY HEALTH INFORMATION EX-**  
11 **CHANGES.**

12 (a) STUDY.—The Secretary of Health and Human  
13 Services shall conduct a study on issues related to the de-  
14 velopment, operation, and implementation of State, re-  
15 gional, and community health information exchanges.  
16 Such study shall include the following, with respect to  
17 such health information exchanges:

18 (1) Profiles detailing the current stages of such  
19 health information exchanges with respect to the  
20 progression of the development, operation, imple-  
21 mentation, organization, and governance of such ex-  
22 changes.

23 (2) The impact of such exchanges on healthcare  
24 quality, safety, and efficiency, including—

1 (A) any impact on the coordination of  
2 health information and services across  
3 healthcare providers and other organizations  
4 relevant to health care;

5 (B) any impact on the availability of health  
6 information at the point-of-care to make timely  
7 medical decisions;

8 (C) any benefits with respect to the pro-  
9 motion of wellness, disease prevention, and  
10 chronic disease management;

11 (D) any improvement with respect to pub-  
12 lic health preparedness and response;

13 (E) any impact on the widespread adoption  
14 of interoperable health information technology,  
15 including electronic health records;

16 (F) any contributions to achieving an  
17 Internet-based national health information net-  
18 work; and

19 (G) any contribution of health information  
20 exchanges to consumer access and to con-  
21 sumers' use of their health information.

22 (3) Best practice models for financing,  
23 incentivizing, and sustaining such health information  
24 exchanges.

1           (4) Information identifying the common prin-  
2       ciples, policies, tools, and standards used (or pro-  
3       posed) in the public and private sectors to support  
4       the development, operation, and implementation of  
5       such health information exchanges.

6           (5) A description of any areas in which Federal  
7       government leadership is needed to support growth  
8       and sustainability of such health information ex-  
9       changes.

10       (b) REPORT.—Not later than one year after the date  
11   of enactment of this Act, the Secretary of Health and  
12   Human Services shall submit to Congress a report on the  
13   study described in subsection (a), including such rec-  
14   ommendations as the Secretary determines appropriate to  
15   facilitate the development, operation, and implementation  
16   of health information exchanges.

1 **TITLE II—EXPEDITED MODIFICA-**  
2 **TION PROCEDURES FOR AND**  
3 **ADOPTION OF TRANS-**  
4 **ACTIONAL STANDARDS AND**  
5 **CODES**

6 **SEC. 201. PROCEDURES TO ENSURE TIMELY UPDATING OF**  
7 **STANDARDS THAT ENABLE ELECTRONIC EX-**  
8 **CHANGES.**

9 Section 1174(b) of the Social Security Act (42 U.S.C.  
10 1320d-3(b)) is amended—

11 (1) in paragraph (1)—

12 (A) in the first sentence, by inserting “and  
13 in accordance with paragraph (3)” before the  
14 period; and

15 (B) by adding at the end the following new  
16 sentence: “For purposes of this subsection and  
17 section 1173(c)(2), the term ‘modification’ in-  
18 cludes a new version or a version upgrade.”;  
19 and

20 (2) by adding at the end the following new  
21 paragraph:

22 “(3) EXPEDITED PROCEDURES FOR ADOPTION  
23 OF ADDITIONS AND MODIFICATIONS TO STAND-  
24 ARDS.—

1           “(A) IN GENERAL.—For purposes of para-  
2           graph (1), the Secretary shall provide for an ex-  
3           pedited upgrade program (in this paragraph re-  
4           ferred to as the ‘upgrade program’), in accord-  
5           ance with this paragraph, to develop and ap-  
6           prove additions and modifications to the stand-  
7           ards adopted under section 1173(a) to improve  
8           the quality of such standards or to extend the  
9           functionality of such standards to meet evolving  
10          requirements in health care.

11          “(B) PUBLICATION OF NOTICES.—Under  
12          the upgrade program:

13               “(i) VOLUNTARY NOTICE OF INITI-  
14               ATION OF PROCESS.—Not later than 30  
15               days after the date the Secretary receives  
16               a notice from a standard setting organiza-  
17               tion that the organization is initiating a  
18               process to develop an addition or modifica-  
19               tion to a standard adopted under section  
20               1173(a), the Secretary shall publish a no-  
21               tice in the Federal Register that—

22                       “(I) identifies the subject matter  
23                       of the addition or modification;

1 “(II) provides a description of  
2 how persons may participate in the  
3 development process; and

4 “(III) invites public participation  
5 in such process.

6 “(ii) VOLUNTARY NOTICE OF PRE-  
7 LIMINARY DRAFT OF ADDITIONS OR MODI-  
8 FICATIONS TO STANDARDS.—Not later  
9 than 30 days after the date of the date the  
10 Secretary receives a notice from a standard  
11 setting organization that the organization  
12 has prepared a preliminary draft of an ad-  
13 dition or modification to a standard adopt-  
14 ed by section 1173(a), the Secretary shall  
15 publish a notice in the Federal Register  
16 that—

17 “(I) identifies the subject matter  
18 of (and summarizes) the draft;

19 “(II) specifies the procedure for  
20 obtaining documentation for the draft;

21 “(III) provides a description of  
22 how persons may submit comments in  
23 writing and at any public hearing or  
24 meeting held by the organization on  
25 the draft; and

1                   “(IV) invites submission of such  
2                   comments and participation in such  
3                   hearing or meeting.

4                   “(iii) NOTICE OF PROPOSED ADDITION  
5                   OR MODIFICATION TO STANDARDS.—Not  
6                   later than 30 days after the date of the  
7                   date the Secretary receives a notice from a  
8                   standard setting organization that the or-  
9                   ganization has a proposed addition or  
10                  modification to a standard adopted under  
11                  section 1173(a) that the organization in-  
12                  tends to submit under subparagraph  
13                  (D)(iii), the Secretary shall publish a no-  
14                  tice in the Federal Register that contains,  
15                  with respect to the proposed addition or  
16                  modification, the information required in  
17                  the notice under clause (ii) with respect to  
18                  a preliminary draft of an addition or modi-  
19                  fication.

20                  “(iv) CONSTRUCTION.—Nothing in  
21                  this paragraph shall be construed as re-  
22                  quiring a standard setting organization to  
23                  request the notices described in clauses (i)  
24                  and (ii) with respect to an addition or  
25                  modification to a standard in order to

1           qualify for an expedited determination  
2           under subparagraph (C) with respect to a  
3           proposal submitted to the Secretary for  
4           adoption of such addition or modification.

5           “(C) PROVISION OF EXPEDITED DETER-  
6           MINATION.—Under the upgrade program and  
7           with respect to a proposal by a standard setting  
8           organization for an addition or modification to  
9           a standard adopted under section 1173(a), if  
10          the Secretary determines that the standard set-  
11          ting organization developed such addition or  
12          modification in accordance with the require-  
13          ments of subparagraph (D) and the National  
14          Committee on Vital and Health Statistics rec-  
15          ommends approval of such addition or modifica-  
16          tion under subparagraph (E), the Secretary  
17          shall provide for expedited treatment of such  
18          proposal in accordance with subparagraph (F).

19          “(D) REQUIREMENTS.—The requirements  
20          under this subparagraph with respect to a pro-  
21          posed addition or modification to a standard by  
22          a standard setting organization are the fol-  
23          lowing:

24                 “(i) REQUEST FOR PUBLICATION OF  
25                 NOTICE.—The standard setting organiza-



1                   tion submits to the Secretary a request for  
2                   publication in the Federal Register of a no-  
3                   tice described in subparagraph (B)(iii) for  
4                   the proposed addition or modification.

5                   “(ii) PROCESS FOR RECEIPT AND  
6                   CONSIDERATION OF PUBLIC COMMENT.—  
7                   The standard setting organization provides  
8                   for a process through which, after the pub-  
9                   lication of the notice referred to under  
10                  clause (i), the organization—

11                  “(I) receives and responds to  
12                  public comments submitted on a time-  
13                  ly basis on the proposed addition or  
14                  modification before submitting such  
15                  proposed addition or modification to  
16                  the National Committee on Vital and  
17                  Health Statistics under clause (iii);

18                  “(II) makes publicly available a  
19                  written explanation for its response in  
20                  the proposed addition or modification  
21                  to comments submitted on a timely  
22                  basis; and

23                  “(III) makes public comments re-  
24                  ceived under clause (I) available, or

1 provides access to such comments, to  
2 the Secretary.

3 “(iii) SUBMITTAL OF FINAL PRO-  
4 POSED ADDITION OR MODIFICATION TO  
5 NCVHS.—After completion of the process  
6 under clause (ii), the standard setting or-  
7 ganization submits the proposed addition  
8 or modification to the National Committee  
9 on Vital and Health Statistics for review  
10 and consideration under subparagraph (E).  
11 Such submission shall include information  
12 on the organization’s compliance with the  
13 notice and comment requirements (and re-  
14 sponses to those comments) under clause  
15 (ii).

16 “(E) HEARING AND RECOMMENDATIONS  
17 BY NATIONAL COMMITTEE ON VITAL AND  
18 HEALTH STATISTICS.—Under the upgrade pro-  
19 gram, upon receipt of a proposal submitted by  
20 a standard setting organization under subpara-  
21 graph (D)(iii) for the adoption of an addition or  
22 modification to a standard, the National Com-  
23 mittee on Vital and Health Statistics shall pro-  
24 vide notice to the public and a reasonable op-  
25 portunity for public testimony at a hearing on

1           such addition or modification. The Secretary  
2           may participate in such hearing in such capac-  
3           ity (including presiding ex officio) as the Sec-  
4           retary shall determine appropriate. Not later  
5           than 90 days after the date of receipt of the  
6           proposal, the Committee shall submit to the  
7           Secretary its recommendation to adopt (or not  
8           adopt) the proposed addition or modification.

9           “(F) DETERMINATION BY SECRETARY TO  
10          ACCEPT OR REJECT NATIONAL COMMITTEE ON  
11          VITAL AND HEALTH STATISTICS RECOMMENDA-  
12          TION.—

13               “(i) TIMELY DETERMINATION.—  
14           Under the upgrade program, if the Na-  
15           tional Committee on Vital and Health Sta-  
16           tistics submits to the Secretary a rec-  
17           ommendation under subparagraph (E) to  
18           adopt a proposed addition or modification,  
19           not later than 90 days after the date of re-  
20           ceipt of such recommendation the Sec-  
21           retary shall make a determination to ac-  
22           cept or reject the recommendation and  
23           shall publish notice of such determination  
24           in the Federal Register not later than 30  
25           days after the date of the determination.

1 “(ii) CONTENTS OF NOTICE.—If the  
2 determination is to reject the recommenda-  
3 tion, such notice shall include the reasons  
4 for the rejection. If the determination is to  
5 accept the recommendation, as part of  
6 such notice the Secretary shall promulgate  
7 the modified standard (including the ac-  
8 cepted proposed addition or modification  
9 accepted).

10 “(iii) LIMITATION ON CONSIDER-  
11 ATION.—The Secretary shall not consider a  
12 proposal under this subparagraph unless  
13 the Secretary determines that the require-  
14 ments of subparagraph (D) (including pub-  
15 lication of notice and opportunity for pub-  
16 lic comment) have been met with respect to  
17 the proposal.

18 “(G) EXEMPTION FROM PAPERWORK RE-  
19 Duction ACT.—Chapter 35 of title 44, United  
20 States Code, shall not apply to a final rule pro-  
21 mulgated under subparagraph (F).”.

22 **SEC. 202. UPGRADING ASC X12 AND NCPDP STANDARDS.**

23 The Secretary of Health and Human Services shall  
24 provide by notice published in the Federal Register for the

1 following replacements of standards to apply to trans-  
2 actions occurring on or after April 1, 2009:

3 (1) ACCREDITED STANDARDS COMMITTEE X12  
4 (ASC X12) STANDARD.—The replacement of the Ac-  
5 credited Standards Committee X12 (ASC X12) ver-  
6 sion 4010 adopted under section 1173(a) of such  
7 Act (42 U.S.C. 1320d-2(a)) with the ASC X12 ver-  
8 sion 5010, as reviewed by the National Committee  
9 on Vital Health Statistics.

10 (2) NATIONAL COUNCIL FOR PRESCRIPTION  
11 DRUG PROGRAMS (NCPDP) TELECOMMUNICATIONS  
12 STANDARDS.—The replacement of the National  
13 Council for Prescription Drug Programs (NCPDP)  
14 Telecommunications Standards version 5.1 adopted  
15 under section 1173(a) of such Act (42 U.S.C.  
16 1320d-2(a)) with whichever is the latest version of  
17 the NCPDP Telecommunications Standards that has  
18 been approved by such Council and reviewed by the  
19 National Committee on Vital Health Statistics as of  
20 April 1, 2008.

1 **TITLE III—PROMOTING THE USE**  
2 **OF HEALTH INFORMATION**  
3 **TECHNOLOGY TO BETTER CO-**  
4 **ORDINATE HEALTH CARE**

5 **SEC. 301. SAFE HARBORS TO ANTIKICKBACK CIVIL PEN-**  
6 **ALTIES AND CRIMINAL PENALTIES FOR PRO-**  
7 **VISION OF HEALTH INFORMATION TECH-**  
8 **NOLOGY AND TRAINING SERVICES.**

9 (a) FOR CIVIL PENALTIES.—Section 1128A of the  
10 Social Security Act (42 U.S.C. 1320a-7a) is amended—

11 (1) in subsection (a), by adding at the end the  
12 following new sentence: “Paragraph (5) shall not  
13 apply to nonmonetary remuneration (in the form of  
14 health information technology or related installation,  
15 maintenance, support, or training services) made by  
16 a person to an individual described in such para-  
17 graph if the provision of such remuneration is with-  
18 out an agreement between the parties or legal condi-  
19 tion that limits or restricts the use of the health in-  
20 formation technology in conjunction with other  
21 health information technology, if the person (or a  
22 representative of such person) has not taken any ac-  
23 tion to disable any basic feature of any hardware or  
24 software component of such remuneration that

1 would permit interoperability, and if the remunera-  
2 tion will assist with the individual's health care.”;

3 (2) in subsection (b), by adding at the end the  
4 following new paragraph:

5 “(4) For purposes of this subsection, induce-  
6 ments to reduce or limit services described in para-  
7 graph (1) shall not include the practical or other ad-  
8 vantages resulting from health information tech-  
9 nology or related installation, maintenance, support,  
10 or training services.”; and

11 (3) in subsection (i), by adding at the end the  
12 following new paragraph:

13 “(8) The term ‘health information technology’  
14 means hardware, software, license, right, intellectual  
15 property, equipment, or other information tech-  
16 nology (including new versions, upgrades, and  
17 connectivity) designed primarily for the electronic  
18 creation, maintenance, or exchange of health infor-  
19 mation to better coordinate care or improve health  
20 care quality, efficiency, or research.”.

21 (b) FOR CRIMINAL PENALTIES.—Section  
22 1128B(b)(3) of such Act (42 U.S.C. 1320a-7b(b)(3)) is  
23 amended—

24 (1) in subparagraph (G), by striking “and” at  
25 the end;

1           (2) in the subparagraph (H) added by section  
2           237(d) of the Medicare Prescription Drug, Improve-  
3           ment, and Modernization Act of 2003 (Public Law  
4           108–173; 117 Stat. 2213)—

5           (A) by moving such subparagraph 2 ems to  
6           the left; and

7           (B) by striking the period at the end and  
8           inserting a semicolon;

9           (3) in the subparagraph (H) added by section  
10          431(a) of such Act (117 Stat. 2287)—

11          (A) by redesignating such subparagraph as  
12          subparagraph (I);

13          (B) by moving such subparagraph 2 ems  
14          to the left; and

15          (C) by striking the period at the end and  
16          inserting “; and”; and

17          (4) by adding at the end the following new sub-  
18          paragraph:

19               “(J) any nonmonetary remuneration (in  
20               the form of health information technology, as  
21               defined in section 1128A(i)(8), or related instal-  
22               lation, maintenance, support or training serv-  
23               ices) made to a person if—



1 “(i) the provision of such remunera-  
2 tion is without an agreement between the  
3 parties or legal condition that—

4 “(I) limits or restricts the use of  
5 the health information technology to  
6 services provided by the physician to  
7 individuals receiving services at the  
8 entity;

9 “(II) limits or restricts the use of  
10 the health information technology in  
11 conjunction with other health informa-  
12 tion technology; or

13 “(III) conditions the provision of  
14 such remuneration on the referral of  
15 patients or business to the entity;

16 “(ii) such remuneration is arranged  
17 for in a written agreement that is signed  
18 by the parties involved (or their represent-  
19 atives) and that specifies the remuneration  
20 solicited or received (or offered or paid)  
21 and states that the provision of such remu-  
22 nation is made for the primary purpose  
23 of better coordination of care or improve-  
24 ment of health quality, efficiency, or re-  
25 search; and

1                   “(iii) the entity providing the remuneration (or a representative of such entity) has not taken any action to disable any basic feature of any hardware or software component of such remuneration that would permit interoperability.”.

7           (c) EFFECTIVE DATE AND EFFECT ON STATE  
8 LAWS.—

9           (1) EFFECTIVE DATE.—The amendments made  
10 by subsections (a) and (b) shall take effect on the  
11 date that is 120 days after the date of the enactment of this Act.

13           (2) PREEMPTION OF STATE LAWS.—No State  
14 (as defined in section 1101(a) of the Social Security  
15 Act (42 U.S.C. 1301(a)) for purposes of title XI of  
16 such Act) shall have in effect a State law that imposes a criminal or civil penalty for a transaction described in the last sentence of section 1128A(a), section 1128A(b)(4), or section 1128B(b)(3)(J) of such  
20 Act, as added by subsections (a)(1), (a)(2), and (b),  
21 respectively, if the conditions described in the respective provision, with respect to such transaction,  
22 are met.  
23

1   **SEC. 302. EXCEPTION TO LIMITATION ON CERTAIN PHYSI-**  
2                   **CIAN REFERRALS (UNDER STARK) FOR PRO-**  
3                   **VISION OF HEALTH INFORMATION TECH-**  
4                   **NOLOGY AND TRAINING SERVICES TO**  
5                   **HEALTH CARE PROFESSIONALS.**

6           (a) IN GENERAL.—Section 1877(b) of the Social Se-  
7   curity Act (42 U.S.C. 1395nn(b)) is amended by adding  
8   at the end the following new paragraph:

9                   “(6) INFORMATION TECHNOLOGY AND TRAIN-  
10           ING SERVICES.—

11                   “(A) IN GENERAL.—Any nonmonetary re-  
12           muneration (in the form of health information  
13           technology or related installation, maintenance,  
14           support or training services) made by an entity  
15           to a physician if—

16                   “(i) the provision of such remunera-  
17           tion is without an agreement between the  
18           parties or legal condition that—

19                   “(I) limits or restricts the use of  
20           the health information technology to  
21           services provided by the physician to  
22           individuals receiving services at the  
23           entity;

24                   “(II) limits or restricts the use of  
25           the health information technology in

1 conjunction with other health informa-  
2 tion technology; or

3 “(III) conditions the provision of  
4 such remuneration on the referral of  
5 patients or business to the entity;

6 “(ii) such remuneration is arranged  
7 for in a written agreement that is signed  
8 by the parties involved (or their represent-  
9 atives) and that specifies the remuneration  
10 made and states that the provision of such  
11 remuneration is made for the primary pur-  
12 pose of better coordination of care or im-  
13 provement of health quality, efficiency, or  
14 research; and

15 “(iii) the entity (or a representative of  
16 such entity) has not taken any action to  
17 disable any basic feature of any hardware  
18 or software component of such remunera-  
19 tion that would permit interoperability.

20 “(B) HEALTH INFORMATION TECHNOLOGY  
21 DEFINED.—For purposes of subparagraph (A),  
22 the term ‘health information technology’ means  
23 hardware, software, license, right, intellectual  
24 property, equipment, or other information tech-  
25 nology (including new versions, upgrades, and

1           connectivity) designed primarily for the elec-  
2           tronic creation, maintenance, or exchange of  
3           health information to better coordinate care or  
4           improve health care quality, efficiency, or re-  
5           search.”.

6           (b) EFFECTIVE DATE AND EFFECT ON STATE  
7   LAWS.—

8           (1) EFFECTIVE DATE.—The amendment made  
9           by subsection (a) shall take effect on the date that  
10          is 120 days after the date of the enactment of this  
11          Act.

12          (2) PREEMPTION OF STATE LAWS.—No State  
13          (as defined in section 1101(a) of the Social Security  
14          Act (42 U.S.C. 1301(a)) for purposes of title XI of  
15          such Act) shall have in effect a State law that im-  
16          poses a criminal or civil penalty for a transaction de-  
17          scribed in section 1877(b)(6) of such Act, as added  
18          by subsection (a), if the conditions described in such  
19          section, with respect to such transaction, are met.

Amend the title so as to read: “A bill to promote a  
better health information system.”